

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SATURNINO REMOLLO Y RETES, ACCUSED-APPELLANT.

G.R. No. 104498. October 22, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

Saturnino Remollo Y Retes appeals from a decision of the Regional Trial Court of Dumaguete City, finding him guilty of the crime of rape with homicide.

Appellant was charged under the following information:

"That at about past seven o'clock in the evening of April 27, 1991, at Barangay Cancawas, 'San Jose, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and by the fact that Maryjin Superal was only six years old, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with said child, Maryjin Superal, against her will.

That by reason or on occasion of rape, a homicide was committed on the child, Maryjin Superal, by said accused.

Contrary to paragraphs 1 and 3 of Article 335 of the Revised Penal Code."[1]

At arraignment, appellant Remollo entered a plea of not guilty. Trial ensued and judgment was rendered on 17 January 1992 as follows:

"WHEREFORE, premises considered, the Court finds accused Saturnino Remollo Y Retes guilty of the complex crime of Rape with Homicide and hereby sentences him to suffer the indivisible penalty of RECLUSION PERPETUA with the attendant accessory penalties under the law.

The accused is hereby given full credit [for] his preventive imprisonment from the time of his arrest until the promulgation of this judgment.

The accused is hereby ordered to pay the heirs of the deceased victim Maryjin Superal death indemnity at P50,000.00; exemplary damages at P20,000.00; moral damages at P50,000.00; plus costs of the proceedings.

IT IS SO ORDERED."[2]

The prosecution's version of the relevant facts may be outlined as follows:

On the evening of 27 April 1991, Gabriel Superal left his home in Barrio Cancawas, San Jose, Negros Oriental, to go to the house of Santos and Lucina Remollo, appellant's parents, for a drinking party. He brought along his six year old daughter, Maryjin Superal, not knowing that this would be the last night he would see her alive.

At the house of her grandparents, Maryjin was seated beside her father while the latter was drinking with Manuel and Gabriel Remollo, two brothers of appellant. After a while, appellant Saturnino Remollo went near the group,

pulled Maryjin and forced her to go with him to the kitchen to eat. Gabriel Superal thought nothing of this because appellant Remollo was an uncle of Maryjin.

At about 7:30 p.m., Gabriel Superal went home alone, believing that his daughter had gone home ahead of him. Upon reaching his house, his wife told him that Maryjin had not yet arrived. Gabriel Superal then left home to search for his daughter until midnight without success. He resumed the search at 4:00 a.m. the following day.

At around 8:00 a.m. on 28 April 1991, Linda Catilok found the dead body of Maryjin near a big blackberry (lomboy) tree on the slope of a hill, about one hundred (100) meters away from the appellant's house.[3]

A post-mortem examination was conducted by Municipal Health Officer Dra. Bienvenida Palong-Palong at 10:30 a.m. the same day the body was discovered. The examination disclosed the following:

"The cadaver was dead for twelve (12) hours at the time of the examination and it was at the stage of rigor mortis which sets in three (3) to six (6) hours after death. The cadaver was very rigid. The victim was wearing a polka dot dress with white background and black dots. The dress was drawn at the back of the stomach and the victim had no underwear. The victim was lying in a prone position and dried banana leaves were tied around the neck with the tongue protruding from the mouth. The victim was strangled as evidence (sic) by the ligature around the neck. The victim sustained physical injuries consisting of abrasions on the upper left and right thighs, ligature marks around the neck, hematoma at the left side of the hip. The cause of death was asphyxia as a result of strangulation. The internal examination revealed that the vaginal orifice admits one finger easily and the hymen was lacerated. Whitish fluid was found in the vagina which was positive for spermatozoa. The laceration was due to the penetration of a hard object which could be a penis because of the presence of spermatozoa. The doctor considered the orifice abnormal because even in adults, the finger is hard to insert. There possibly was a struggle during the penetration because when something penetrates the hymen, the natural reaction is to oppose the force and the victim was only six (6) years old." [4]

Angelito Remollo and Eddie Singco, ten and thirteen years old, respectively, nephews of appellant Remollo were, according to their subsequent testimony before the trial court, in the evening of 27 April 1991, awakened by appellant Remollo who asked them for soap because he wanted to bathe. Appellant then informed the boys that he had slain Maryjin Superal and warned them not to tell anybody[5] or else they too would be killed.[6]

Appellant Remollo, upon the other hand, offered his own version of the incident, stressing that he could not have been at the scene of the crime when it happened:

At 5:00 in the afternoon of 27 April 1991, Remollo took a bath in a river which was about 200 arm-lengths from his house. Later, he went with Rey Boy Ramirez and Loly Bajamunde to a dance in San Jose, Negros Oriental arriving there at about 6:15 p.m. Before appellant left their house at 6:00 that night, he saw Maryjin Superal and her father there. Remollo stayed at the dancing place until 4:00 a.m. the following morning, leaving the hall only twice that night with Rey Boy Ramirez to relieve himself. Later, appellant went home with the same companions. At home, he found everybody already awake, taking their morning coffee. Eddie Singco and Angelito Remollo were out fetching water so, he did not have a chance to talk to them. Rey Boy Ramirez stayed with him in his house until 7:00 a.m. at which time they were fetched by their employer who brought them to Bais City to cut sugarcane. From there, he and his brother Manuel were taken by the police to the municipal building in San Jose, Negros Oriental on 28 April 1991.[7]

Appellant Remollo contends that the trial court committed serious error in:

- (a) according weight and credence to the testimonies of the prosecution witnesses Angelito Remollo and Eddie Singco;
- (b) admitting in evidence the extrajudicial confession (Exhibit "G") of appellant which had been obtained in

violation of his constitutional rights; and

(c) convicting appellant of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.[8]

In respect of the first assignment of error, appellant argues that the testimony of Angelito Remollo and Eddie Singco was improbable because it was contrary to human experience that one who had just committed a grievous crime would reveal such crime casually to anyone, much less to children, especially children who were related by blood to the victim.[9]

The familiar rule is that the assessment by a trial court of the sincerity and credibility of witnesses, is to be accorded great respect by appellate courts."[10]

In the instant case, the trial court accepted the statements of Angelito Remollo and Eddie Singco as straightforward and candid. Appellant Remollo has failed to demonstrate that the two (2) young witnesses were moved by any grudge or evil motive to testify falsely against him. There is no evidence to suggest that the two (2) witnesses, nephews of appellant who lived in the same house with them, would fabricate a story falsely implicating their uncle in a terrible crime. The following statements made at the trial appear relevant:

"Testimony of Angelito Remollo:

x x x x x x x x

Q: Since attaining the age of reason this Saturnino Remollo has been living with you in that house, am I right?

A: Yes, sir.

Q: From your infancy up to the time you are on your feet you have known that this Saturnino Remollo had taken care of your mother (sic)?

A: Yes, sir.

Q: And during this time that you were together as a common occupant of that house this Saturnino Remollo had played with you, am I correct?

A: Yes, sir.

Q: In fact, not only that you often talked with each other, you had also played some jokes with you (sic)?

A: Yes, sir.

Q: You remember that Saturnino Remollo, your uncle, as one person who likes to joke with you?

A: Yes, sir.

x x x x x x x x

Q: In fact, you did not suspect your uncle Saturnino Remollo that before (sic) he had killed anybody at the time you were talking to him on April 27, 1991, am I right?

A: Yes, sir.

x x x x x x x x"[11]

"Testimony of Eddie Singco:

Q: Now you look (sic) at Saturnino Remollo as one of your elders in that house?

A: Yes, sir.

Q: You respect him for that?

A: Yes, sir.

x x x x x x x x

Q: In short, he would never beat but only threaten you several times when you were misbehaving, is that right?

A: Yes, sir.

Q: When you said that you were threatened by Saturnino Remollo at times, when you were misbehaving he would tell you something that will frighten you?

A: No, sir.

x x x x x x x x

Q: He would make you believe he is stern and brutal, am I correct?

A: Not very. "[12]

In view of appellant's failure to show that the two (2) young witnesses were somehow disqualified as witnesses, or were moved by some improper motive to speak falsely against their uncle-appellant, their statements are entitled to full faith and credence.

We turn to the second error assigned by appellant Remollo: that the trial court had erred in admitting appellant's extrajudicial confession in evidence.

Appellant Remollo claims firstly that he had been made to sign his sworn statement in English, a language he could neither read nor understand, and that that statement had not been translated for him into the vernacular Visayan. Appellant's claim is, however, contradicted by evidence of record. Atty. Alfredo Renacia who, as will be seen later, acted as appellant's counsel at his investigation and who was present when the sworn statement was taken on 29 April 1991, testified that the statement signed by appellant had been read to him first in English and then translated into the Visayan dialect.[13]

Remollo also claims that he had not been informed of his constitutional rights before his extrajudicial confession was taken. The extrajudicial confession itself, however, states that appellant had been informed of his rights during custodial investigation, and that he had understood his rights and was waiving them as evidenced by his signature below the waiver clause."[14] Moreover, Police Sgt. Gregorio Aniñon testified in court that he had indeed informed Remollo of his rights before the investigation began."[15] Atty. Renacia too affirmed that before the investigation began, he himself had apprised Remollo of the latter's rights.[16]

Appellant asserts next that the investigation had been conducted in a hostile atmosphere caused by the number of people watching the process of investigation which he found "intimidating." Appellant Remollo here in effect seeks to reject his signed confession upon the ground of coercion. The law presumes that a written extrajudicial confession concededly signed by an accused, was voluntarily given, upon the basis that no person in his right mind would knowingly confess to being the doer of a crime unless prompted by truth and conscience.[17] The accused who executed the confession bears the burden of proving otherwise.[18]

In the instant case, appellant Remollo's written confession was taken down and signed in the presence not only of the investigating police officers, but also in the presence of his sister Yolanda Remollo; his own mother Lucina Remollo; and his two (2) young nephews, Angelito Remollo and Eddie Singco; as well as Atty. Renacia. The very

number of persons (all non-police) observing the course of the investigation offered assurance that "police brutality" would be very unlikely. Had his confession indeed been extracted from him by coercion, violence and intimidation, appellant could have presented his own mother and sister to testify to such coercion; appellant did not. Atty. Renacia also testified that appellant had answered the questions put to him without being threatened or intimidated.[19] The foregoing circumstances lead us to agree with the trial court that the extrajudicial confession had been given voluntarily by appellant Remollo.

Finally, appellant maintains that his right to counsel had been disregarded because Atty. Renacia was not his counsel of choice but had been chosen by the police authorities. Atty. Renacia said in court that he was not counsel of appellant Remollo but that he had been requested by the police authorities to assist in connection with the investigation of appellant Remollo. Upon the other hand, the record shows that Police Sgt. Aniñon had advised the accused of his right to counsel and of his right to choose one. Because, however, there was no other lawyer available at that time and place, except Atty. Renacia who lived near the police station, Atty. Renacia's assistance was enlisted by the police authorities.[20] We do not, however, believe that because Atty. Renacia had been initially requested by the police to assist in connection with the investigation of appellant, that, therefore, he was forced upon the appellant and cannot be regarded as counsel of Remollo for purposes of determining whether Remollo's constitutional rights had been respected. The investigating officer, Sgt. Aniñon, asked appellant Remollo whether he welcomed the presence and services of Atty. Remollo as his counsel during the investigation and that appellant had replied in the affirmative:

"Q: Will you please tell the court if Saturnino Remollo voluntarily secured the services of Atty. Renacia?

A: In the presence of Atty. Renacia, we told (sic) Saturnino Remollo if he welcomes Atty. Renacia as his counsel during the investigation.

Q: What was the reply of Saturnino Remollo at that time?

A: He accepted."[21]

In *People v. Parojinog*,[22] this Court said:

"Anent his claim that Atty. Fuentes was not his choice, Section 12 (1) of Article III of the 1987 Constitution provides:

'Sec. 12 (1). -- Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.'

It is very clear from the aforequoted provision that a person under investigation for the commission of an offense may choose his own counsel but if he cannot afford the services of counsel, he must be provided with one. While the initial choice of the lawyer in the latter case is naturally lodged in the police investigators, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. In the instant case, the records show that no objection was voiced by the accused throughout the entire proceedings of the investigation and afterwards when he subscribed to its veracity before City Prosecutor Luzminda V. Uy. Thus, he apparently acquiesced to the choice of the investigators. He complained for the first time that Atty. Fuentes was not his choice only during trial. Thus, it was too late.

x x x x x x x x"[23]

(Underscoring supplied)

As pointed out by this Court, speaking through Mme. Justice Herrera, in *People v. Alvarez*:^[24]

"What is sought to be protected [by the constitutional provision on the rights of persons under custodial investigation (Section 12 [1], Article III, Constitution)] is the compulsory disclosure of incriminating facts. The right is guaranteed merely to preclude the slightest coercion as would lead the accused to admit something false (*People v. Layuco*, G.R. No. 69210, 5 July 1989, 175 SCRA 47) not to provide him with the best defense. A lawyer is an officer of the court and upon his shoulders lies the responsibility to see to it that protection has been accorded the rights of the accused, that no injustice to him has been committed x x x."^[25] (Underscoring supplied)

More importantly, Atty. Renacia did in fact behave as counsel of appellant Remollo during the investigation. Upon his arrival at the police station, he talked to appellant and informed him of his constitutional rights, including his right to remain silent.^[26] Atty. Renacia also looked out for any threats or intimidation employed against appellant Remollo during the investigation; Atty. Renacia, as already noted, testified in court that none had been employed in his presence. Atty. Renacia also signed the waiver clause in the extrajudicial confession.^[27]

Finally, assuming (arguendo merely) that the extra-judicial confession of appellant Remollo should be rejected as fatally flawed, we believe that, independently of that confession, the circumstantial evidence made of record in this case is quite sufficient to support a finding of guilt beyond reasonable doubt. The multiple circumstances required under Rule 133, Section 4 of the Rules of Court are the following:

- (1) At the house of his own parents, during a drinking party, appellant got the victim Maryjin Superal to go with him to the kitchen to eat.
- (2) Appellant Remollo was the last person seen with the victim alive, by Maryjin's father and appellant's mother and brothers.^[28]
- (3) Appellant Remollo went down his parent's house on the same night, with the 6-year old victim Maryjin following him.
- (4) When appellant Remollo went home in the early morning of the following day, he woke up his young nephews Angelito Remollo and Eddie Singco and asked them for soap as he wanted to take a bath in the nearby river. Appellant spontaneously told his nephews that he had killed Maryjin and simultaneously threatened them with harm if they reveal that secret to anyone.^[29]
- (5) Most notably, appellant Remollo at the police station during his custodial investigation, voluntarily admitted to his mother, who was then in tears, that he had killed the child Maryjin. This admission was made in the presence of Police Sgt. Aniñon, Atty. Renacia, appellant's sister Yolanda Remollo and his two (2) young nephews.^[30] Appellant Remollo denied in court that he had admitted killing Maryjin to his mother. Appellant, however, failed to present his mother or his sister or Atty. Renacia or anyone else to corroborate his denial. Upon the other hand, Sgt. Aniñon stood firm on his testimony on this point throughout his cross-examination by defense counsel.

Appellant's principal defense on the merits was that of alibi. This Court has in innumerable cases ruled that for the defense of alibi to prosper, the accused must not only prove that he was somewhere else during the commission of the crime; he must also prove that it was impossible for him to be at the scene of the crime during its commission.^[31] Remollo testified that he was attending a dance in San Jose when the rape and killing took place. The situs of the dance was, however, only about 15 minutes from appellant's house by foot by appellant's own testimony. Appellant also failed to present his alleged companions -- Rey Boy Ramirez and Loly Bajamunde -- to corroborate his alibi. At the same time, appellant himself testified that he took a bath in a river which is only 500

arm-lengths from the spot where Maryjin's body was found the next morning and only about 200 arm-lengths from appellant's own house. Appellant's alibi simply cannot stand.

Where the crime resulted in the death of the victim, the civil indemnity granted by the Court has commonly been P50,000.00, in the absence of unusual circumstances warranting a higher indemnity. In the instant case, we consider that a heavier indemnity is appropriate, bearing in mind the tender age of the victim Maryjin Superal and the close blood relationship (uncle and niece) that existed between appellant and the victim. These circumstances indicate an unusual degree of moral depravity. Accordingly, we affirm the grant of exemplary damages of P20,000.00 and moral damages, in addition to the regular indemnity for death of P50,000.00. The moral damages should, however, be reduced to P30,000.00.

WHEREFORE, for all the foregoing, the Decision of the trial court appealed from is hereby AFFIRMED, except insofar as the grant of moral damages is concerned which is hereby reduced to P30,000.00. Costs against accused-appellant.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Information, p. 1; Records, p. 3.

[2] RTC Decision, p. 12; Rollo, p. 29.

[3] TSN, Gabriel Superal Testifying, 31 July 1991, pp. 3-4; Records, pp. 188-189.

[4] RTC Decision, p. 3; Rollo, p. 135.

[5] TSN (Eddie Singco), 29 July 1991, p. 10; Records, p. 178.

[6] TSN, (Angelito Remollo) 29 July 1991, p. 11, Records, p. 158.

[7] RTC Decision, pp. 8-10; Rollo, pp. 140-142. See also TSN, (Saturnino Remollo) 23 October 1991, pp. 5-46; Records, pp. 288-329.

[8] Brief for the Appellant, pp. 12-15, & 22; Rollo, pp. 63-66 and 73.

[9] Brief for the Appellant, pp. 13-14; Rollo pp. 64-65.

[10] People v. Luvendino, 211 SCRA 36 (1992); People v. Sanchez, 199 SCRA 414 (1991); People v. Belibet, 199 SCRA 587 (1991); People v. Espallardo, 198 SCRA 342 (1991); People v. Andaya, 196 SCRA 660 (1991).

[11] TSN (Angelito Remollo), 29 July 1991, pp. 8-9; Records, pp. 155-156.

[12] TSN (Eddie Singco), 29 July 1991, pp. 9-10; Records, pp. 155-156.

[13] TSN (Alfredo Renacia), 5 August 1991, p. 15; Records, p. 245.

[14] The text of the extra-judicial confession of appellant Remollo follows:

"Q: Are you willing to give a free and voluntary sworn statement regarding the matter?

A: Yes, sir.

Q: Do you swear to tell the truth and nothing but the truth in this investigation?

A: Yes, sir.

Q: Do you need the assistance of a lawyer?

A: Yes, sir.

Q: I have here Atty. Alfredo Renacia as your counsel to assist you in the investigation, do you welcome him as your counsel?

A: Yes, sir.

Q: Now that you are willing to give your statement, you must understand your legal rights as provided for under our New Constitution which states as follows:

"That you have the right to remain silent; the right to seek services of a lawyer. That whatever you say in this investigation may be used against your favor or would be favorable to you in any court of justice of the Philippines, is it clearly understood by you?

A: Yes, sir.

Q: Are you willing to sign a waiver to that effect?

A: Yes, sir.

WAIVER

'I have been advised of my rights to remain silent; that anything I say may be used as evidence against me, that I have the right to seek the services of a counsel to be present while I am questioned. I understand these rights and I am willing to make state-ment and answer the questions. No promise or threats have been made to me and no force or pressure of any kind have been used against me.

SATURNINO REMOLLO

(Affiant)

WITH MY ASSISTANCE:

ATTY. ALFREDO B. RENACIA

(Counsel of the Suspect)'

Q: Mr. Saturnino Remollo, do you know Maryjin Superal?

A: She is not familiar to me.

Q: In the evening of April 27, .1991 more or less about 7:00 o'clock in the evening, where were you?

A: I was at home.

Q: Who were with you in your house?

A: I was with my father Santos Remollo, my brother Artemio Remollo, Manuel Remollo and Gabriel Superal.

Q: Who was the companion of Gabriel Superal that evening?

A: A female child.

Q: What transpired while you were having a drink in your house?

A: I went down, the child Maryjin Superal followed me.

Q: Were did you go?

A: She followed me to an abandoned farm near our house.

Q: Did not the child asked you where you were going?

A: No, sir.

Q: Even in reaching that abandoned farm, the child never asked you something?

A: No.

Q: What did you do to the child when reaching that abandoned farm?

A: I lift her up, then let her lay down, took her panty, then I inserted my right index finger to her vagina, then I started inserting my pennies (sic).

Q: Did the child resisted to what you have been doing?

A: No, sir.

Q: Were you able to accomplish your sexual desire?

A: I succeeded in having sexual intercourse with the child.

Q: How many times, that evening?

A Only once, sir.

Q: What did you do with the child after raping her?

A: I took a dried banana leaf and strangled her in the neck, afterwards I left her.

Q: I have here a dried banana leaf which was recovered and taken from the neck of Maryjin Superal, what can you say about this banana left?

A: That is the one, sir.

Q: What was your intention in tying the neck of the child with that banana leaf?

A: I decided to kill her, I lost my presence of mind because I am under influence of liquor.

Q: Now that Maryjin is dead, what do you feel?

A: I repented of what I have done wrong.

Q: What can you say of the crime you have committed.

A: I will accept what the law take against me to what I have done.

Q: Do you have anything more to say, add or retract from your statements?

A: No more.

Q: Are you willing to sign this affidavit, that you are not being forced or coerced the time you were investigated?

A: Yes, sir." (Annex "G-1", Records, p. 21)

[15] TSN (G. Aniñon), 5 August 1991, p. 25; Records, p. 255.

[16] TSN (A. Renacia), 5 August 1991, p. 9; Records, p. 239.

[17] *People v. Luvendino* 211 Scra 36 (1992); *People v. Ribajado*, 142 Scra 637 (1986); *People v. Zea*, 130 Scra 77 (1984).

[18] *People v. Esteban*, 186 SCRA 34 (1990); *People v. Talla, et al.*, 183 SCRA 133 (1990); *People v. De la Cruz*, 115 SCRA 184 (1982).

[19] TSN (Atty. Renacia), 5 August 1991, pp. 4 & 8; Records, pp. 234 & 238.

[20] TSN (G. Aniñon), 5 August 1991, p. 38; Records, p. 268.

[21] *Id.*, p. 26; Records, p. 256.

[22] 203 SCRA 673 (1991).

[23] 203 SCRA at 680.

[24] 201 SCRA 364 (1991).

[25] 201 SCRA at 375-376.

[26] TSN (Atty. Renacia), 5 August 1991, pp. 9-10; Records, pp. 239. and 240.

[27] Please see footnote no. 14.

[28] TSN (Gabriel Superal), 31 July 1991, pp. 5-13.

[29] TSN (Angelito Remollo), 29 July 1991, pp. 9-7; TSN (Eddie Singco), 29 July 1991, pp. 6-8.

[30] TSN (Police Sgt. Aniñon), 5 August 1991, pp. 27-29.

[31] *People v. Pugal* 215 SCRA 247 (1992); *People v. De Guzman* 215 SCRA 375 (1992); *People v. De Paz*, 212 SCRA 56 (1992); *People v. Ocimar* 212 SCRA 646 (1992); *People v. Luvendino* 211 SCRA 36 (1992).

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